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Supreme Court, U.S.
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In The
Supreme Court of the United States

BOY SCOUTS OF AMERICA AND CONNECTICUT RIVERS COUNCIL, BOY SCOUTS OF AMERICA,

Petitioners,

v.

NANCY WYMAN, in her capacity as Comptroller of the State of Connecticut and as a member of the Connecticut State Employee Campaign Committee, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF *AMICI CURIAE* OF CHRISTIAN LEGAL SOCIETY, CAMPUS CRUSADE FOR CHRIST INTERNATIONAL, INTERVARSITY CHRISTIAN FELLOWSHIP/USA, REJOYCE IN JESUS CAMPUS FELLOWSHIP, CHRISTIAN MEDICAL AND DENTAL ASSOCIATION, NATIONAL ASSOCIATION OF EVANGELICALS, IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether a state government's removal of the Boy Scouts from a forum in which they had participated for 30 years because of the Scouts' moral viewpoint and leadership policies unconstitutionally interferes with freedom of expressive association under *Boy Scouts of America v. Dale,* 530 U.S. 640 (2000), and discriminates on the basis of viewpoint under *Rosenberger v. Rector & Visitors of University of Virginia,* 515 U.S. 819 (1995).

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INTEREST OF THE *AMICI CURIAE*[1]

Amicus curiae **Christian Legal Society** ("CLS") is a nonprofit interdenominational association of Christian attorneys, law students, judges, and law professors that has student chapters at 165 law schools across the country, including approximately 70 state law schools. Numerous CLS student chapters have been threatened with denial of equal access to meeting space and student activity funding, because university officials deem that the student groups discriminate on the basis of religion and sexual orientation. Before becoming a member of CLS, a person must sign a statement of faith that he or she agrees with certain basic Christian tenets regarding the nature of God and the authority of the Bible.[2] The CLS student chapter constitution provides that "officers must exemplify the highest standards of morality as set forth in Scripture, abstaining from 'acts of the sinful nature' (Galatians 5:19-21), including fornication, adultery, and homosexual conduct (Exodus 20:14; Matthew 15:19; Romans 1:27; 1 Corinthians 6:9-10)."

Amicus curiae **Campus Crusade for Christ International** ("CCC") has student chapters meeting at 731 universities and colleges across the country, including student chapters at 417 public universities and colleges. The purpose of CCC is to fulfill the Great Commission,

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[1] Counsel for a party did not author this brief, in whole or in part. No one, other than the *amici curiae*, their members, or their counsel, has made a monetary contribution to the preparation and submission of the brief. *See* S. Ct. Rule 37.6.

[2] The specific statements of faith are set forth in the Appendix with the more detailed statements of interest of the *amici curiae*.

Jesus' command to His disciples to "go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, and teaching them to obey everything I have commanded you." *Matthew* 28:19-20. Specifically, the goal of its student chapters is to reach every student at their campuses every year with the Gospel. Its leaders are to be effective witnesses of the Gospel to other students. At numerous public universities, CCC student groups have been threatened with denial of equal access to meeting space and funding because they set religious criteria for their leadership.

Amicus curiae **InterVarsity Christian Fellowship/USA** ("IVCF") has as its purpose to establish and advance at colleges and universities witnessing communities of students and faculty who follow Jesus as Savior and Lord: growing in love for God, God's Word, God's people of every ethnicity and culture and God's purposes in the world. IVCF carries out its ministry through student chapters. Officers of those chapters are required to subscribe to the purpose and doctrinal basis of IVCF and must subscribe to certain basic biblical truths of Christianity. Currently, IVCF has approximately 747 chapters on 552 campuses in the United States, including chapters at 290 public universities and colleges. Many IVCF student chapters at public universities have been threatened with denial of equal access to meeting space and funding because they set religious criteria for their leadership.

Amicus Curiae **Christian Medical and Dental Association** ("CMDA") was founded in 1931 and today represents over 16,000 members – primarily practicing physicians representing the entire range of medical specialties. These members share a common commitment to the principles of biblical faith and the integration of

those principles with professional practice. CMDA has approximately 160 student chapters at university and college campuses, public and private. Some CMDA student chapters have been threatened with denial of equal access to meeting space and funding because of their religious criteria for their leadership.

Amicus curiae **ReJOYce in Jesus Campus Fellowship** ("RJCF") has student chapters at 23 universities and colleges, including student chapters at 14 state universities and colleges. Its purpose is to promote the teachings of Jesus Christ according to the Holy Bible through Bible study, campus activities and service to the campus community. While welcoming all students to attend its meetings, its voting members must subscribe to the group's Doctrinal Statement of Commitment to Historic Christianity, as well as agree to live by the group's written standards of personal conduct. RJCF student chapters have been threatened with denial of equal access to meeting space and funding because of their religious criteria for their leadership.

Amicus curiae **National Association of Evangelicals** ("NAE") is a nonprofit association of evangelical Christian denominations, churches, organizations, institutions, and individuals that includes more than 50,000 local churches from 74 different denominations and serves a constituency of over 20 million people. The NAE is committed to defending religious freedom as a precious gift of God and a vital component of our American heritage.

Pursuant to Rule 37.2(a), blanket consent to the filing of amicus briefs in support of either party was filed with

the Clerk of the Court by counsel for petitioners and counsel for respondents on January 20, 2004.

SUMMARY OF ARGUMENT

Student religious organizations' right of equal access to campus facilities, including student activity funding, frequently is challenged by public university officials who seek to condition student religious organizations' access upon their agreeing to accept as officers persons who do not share their core religious values. These university officials typically claim that student religious organizations (including *amici's* student chapters) violate university policies prohibiting discrimination on the basis of religion or sexual orientation, because the organizations require their officers to subscribe to a statement of faith and to live according to biblical standards of conduct, including sexual conduct. If, despite this Court's decision in *Boy Scouts of America v. Dale,* 530 U.S. 640 (2000), Boy Scouts may be excluded from a state employees' charitable fundraising program because it will not allow homosexual persons to be leaders, then *amici's* student chapters will face increased coercion by public universities to forfeit *either* their First Amendment right to choose leaders who share the groups' core religious values *or* their First Amendment right of equal access to student activity funding and meeting space, despite this Court's holdings in *Rosenberger v. University of Virginia,* 515 U.S. 819 (1995) (religious student group has equal access right to university funding program), and *Widmar v. Vincent,* 454 U.S. 263 (1981) (religious student group has equal access right to meet on university campus).

For over two decades, the Second Circuit has sanctioned government officials' viewpoint discrimination against speakers expressing traditional religious viewpoints, despite this Court's decisions requiring viewpoint neutrality. *See, e.g., Good News Club v. Milford Central School,* 533 U.S. 98, 109 n.3 (2001) ("remarkable that the Court of Appeals majority did not cite *Lamb's Chapel,* despite its obvious relevance to the case"), *rev'g,* 202 F.3d 502 (2d Cir. 2000) (permitting viewpoint discriminatory denial of equal access to religious community group to public school facilities); *Lamb's Chapel v. Center Moriches Union Free School District,* 508 U.S. 384 (1993), *rev'g,* 959 F.2d 381 (2d Cir. 1992) (same); *Board of Education v. Mergens,* 496 U.S. 226, 239 (1990) (upholding Equal Access Act, 20 U.S.C. §§ 4071-74 (2003), enacted in response to *Brandon v. Guilderland Bd. of Ed.,* 635 F.2d 971 (2d Cir. 1980) (requiring public high school officials to deny equal access to student religious group)). The decision below again ignores this Court's requirement of viewpoint neutrality.

Decisive action by this Court will prevent yet another round of litigation to protect the right of religious student groups to have equal access to university facilities, including student activity funding, free from viewpoint discrimination by university officials. The First Amendment right of religious student groups to require that their leaders affirm their core religious values, without forfeiting their First Amendment right of equal access to university facilities and student activity funding, is threatened if the decision below is allowed to stand.

ARGUMENT

I. PUBLIC UNIVERSITIES HAVE THREATENED RELIGIOUS STUDENT GROUPS WITH LOSS OF ACCESS TO CAMPUS FACILITIES AND STUDENT ACTIVITY FUNDING IF THE GROUPS REFUSE TO AGREE TO ACCEPT AS OFFICERS PERSONS WHO DO NOT SHARE THE GROUPS' CORE RELIGIOUS VALUES, INCLUDING THEIR RELIGIOUS VIEWPOINTS REGARDING HOMOSEXUAL CONDUCT.

A. The Nationwide Problem will be Exacerbated by the Decision Below.

Since 1993, *amici's* student chapters have been threatened with loss of equal access, including student activity funding, at campuses across the country, including public universities and colleges in New York, Vermont, Florida, North Dakota, Iowa, Oklahoma, Michigan, Illinois, Ohio, Minnesota, Missouri, Georgia, California, Arizona, and Texas. Typically, the student groups have been forced to threaten litigation in order to protect their right of access guaranteed by this Court in *Widmar v. Vincent,* 454 U.S. 263 (1981), and *Rosenberger v. University of Virginia,* 515 U.S. 819 (1995).

Essentially, many state universities have tried to force a new orthodoxy upon student religious organizations: all student groups must accept homosexual conduct, and the advocacy of such conduct, as a morally correct (or at least, a morally neutral) choice. State universities have sought to enforce policies prohibiting discrimination on the basis of sexual orientation against student groups whose religious principles teach that "homosexual behavior [is] a sin that disqualifies those who practice it from membership or leadership within the group." Stephen M. Bainbridge,

Student Religious Organizations and University Policies Against Discrimination on the Basis of Sexual Orientation: Implications of the Religious Freedom Restoration Act, 21 J.C. & U.L. 369 (1994). For example, the University of Illinois denied recognition to the Christian Legal Society ("CLS") chapter at the College of Law because the CLS student leaders "refused to sign a University pledge to refrain from discrimination on the basis of sexual orientation," although recognition was eventually restored. *Id.* at 370.

University officials have launched a separate, but related, attack against *religious* student groups that discriminate on the basis of *religion* in the selection of their officers. For example, Georgia Institute of Technology threatened not to recognize a student chapter of ReJOYce in Jesus Campus Fellowship because it required its voting members to affirm its statement of faith. The Georgia Attorney General issued an opinion advising that the university's failure to recognize the religious student group would violate the group's free speech rights. Ga. Op. Att'y Gen. 97-32 (1997).

Similarly, the University of Minnesota Law School threatened to deny recognition to the CLS chapter because it required its voting members and officers to subscribe to its statement of faith. The University judged this to be "discrimination on the basis of religion" in violation of the University's Equal Opportunity statement, although it eventually relented. Michael Stokes Paulsen, *A Funny Thing Happened on the Way to the Limited Public Forum: Unconstitutional Conditions on "Equal Access" for Religious Speakers and Groups,* 29 U.C. Davis L. Rev. 653, 668-672 (1996).

Another student religious group recently filed suit against the University of Minnesota challenging its requirement that a religious student group adopt the university's nondiscrimination policy in order to be recognized for access to meeting space and funding. The group refuses: 1) to sign a statement that it will not "discriminate" on the basis of religion or sexual orientation and 2) to state in its constitution that its membership is open to all students regardless of religion or sexual orientation. *Maranatha Christian Fellowship v. Board of Regents of the University of Minnesota System, et al.,* No. 03-CV-5618 (D. Minn. filed Oct. 24, 2003). Without recognition, the religious group will not be able to meet on campus or apply for student activity funding.

Currently, the CLS chapter at the Ohio State University ("OSU") is threatened with denial of equal access, including funding and meeting space, due to its religious criteria for officers. The controversy began this fall when a member of a gay, lesbian, bisexual and transgender student group at OSU's Moritz College of Law filed an official complaint with the administration seeking de-recognition of the CLS student chapter, alleging such recognition violated the university's nondiscrimination policy. The CLS chapter's constitution requires its officers and members to sign a statement of faith and specifies that its "officers must exemplify the highest standards of morality as set forth in Scripture, abstaining from 'acts of the sinful nature' (Galatians 5:19-21), including fornication, adultery, and homosexual conduct (Exodus 20:14; Matthew 15:19; Romans 1:27; 1 Corinthians 6:9-10)." *Form Bylaws for Christian Legal Society Chapter, Student Chapter Manual 2003-2004*, App. 2, pp. 1-4 (2003). *See* Jeff Polesovsky, *GLBT Group Files Formal Complaint Against*

CLS, The Lantern, November 18, 2003, *at* http://www.thelantern.com/main.cfm?include=detail&storyid=560959. University officials initially indicated its recognition would be withheld; however, under threat of lawsuit, the university temporarily reinstated recognition, pending a 90-day process to consider the chapter's request that the university amend its written policy to provide: "The creed, religion and sexual orientation components of this policy shall not apply to a religious organization with respect to the organization's selection of members and officers." *See* Jeff Polesovsky, *Society Awaiting Ruling by University: Proposed Change would Give Religious Exemption,* The Lantern, January 30, 2004, *at* http://www.thelantern.com/news/593203.html?mkey=1185690.

If de-recognized, the CLS chapter will lose meeting space and access to two sources of student activity funding: 1) the $300-$500 that every student organization automatically receives from the university upon annual renewal of its recognition, and 2) Student Bar Association ("SBA") funding from a separate law student activity fees fund available only to recognized law student groups. The SBA threatened to exclude the CLS chapter from its student activity funding, although threat of lawsuit has caused it to await the university's final decision regarding recognition. *See* Jeff Polesovsky, *Student Bar Association Threatened with Lawsuit,* The Lantern, November 18, 2003, *at* http://www.thelantern.com/main.cfm?incldue-detail&storyid=560961. The university student newspaper has called upon university officials to deny recognition to the CLS chapter and to launch an "investigation into the constitutions of all students groups." *Legal Troubles: Christian Society Discriminates,* The Lantern, November

12, 2003, *at* http://www.thelantern.com/main.cfm?include=detail&storyid=555292.

Amici emphasize that their meetings are open to all persons. They do not exclude persons who have homosexual inclinations, or who have engaged in homosexual conduct in the past, from serving as officers. As long as the individuals now agree that homosexual *conduct* is sinful and that they will abstain from engaging in or advocating such conduct, they may be eligible to serve as leaders. University officials, however, have generally refused to define the term "sexual orientation" to include only "orientation." Instead university officials insist that "sexual orientation" reaches far beyond "inclination" to the protection and advocacy of homosexual conduct.

Ironically, university officials violate their own policies against discrimination on the basis of religion when they penalize a *religious* group for selecting leaders who adhere to the group's core *religious* values. While university officials would immediately recognize that environmental groups want only leaders who are pro-environment, and Students Against Drunk Drivers do not want leaders who misuse alcohol, they seem oblivious to the paradox of using a policy against *religious* discrimination to prohibit a *religious* group from defining itself by its *religious* convictions.

The First Amendment protects the right of student religious organizations to determine their own criteria for selection and retention of leaders. Were that not the case, university officials would have *carte blanche* to reshape student organizations to reflect the government's values and message. This Court eloquently warned against this danger in *Rosenberger,* when it wrote:

> The . . . danger . . . to speech from the chilling of individual thought and expression . . . is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition. . . . For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses.

515 U.S. at 835-36 (citations omitted). *See Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 579 (1995) ("The Speech Clause has no more certain antithesis" than "a proposal to limit speech in the service of orthodox expression.").

Because it allows government officials to condition access upon a group's forfeiture of its right to select its leaders in accordance with its viewpoint regarding homosexual conduct, the decision below will exacerbate the problem faced by student religious organizations nationwide.

B. Religious Student Groups Risk a Heavy Penalty for Exercising Their First Amendment Right to Select Leaders Who Share Their Religious Viewpoints.

Despite this Court's decision in *Boy Scouts of America v. Dale,* 530 U.S. 640 (2000), university officials have continued to pressure religious student organizations to relinquish their right to determine their groups' leadership qualifications. If recognition is denied, student groups forfeit numerous benefits and incur numerous harms,

including: 1) loss of equal access to campus facilities (Paulsen, *supra,* at 670); 2) loss of equal access to student activity funds (*id.*; Bainbridge, *supra,* at 384); 3) stigmatization as a discriminatory organization (*id.*); 4) loss of reduced rental rates for university facilities (Paulsen, *supra,* at 670); 5) prohibition of on-campus fundraising activities (Bainbridge, *supra,* at 385); 6) loss of reduced advertising rates in the campus newspaper (Paulsen, *supra,* at 670); and 7) imposition of a chilling effect on "conducting publicly-visible activities on University grounds for fear that doing so would lead to the imposition of further sanctions" (Bainbridge, *supra,* at 385).

Religious student groups have refused to amend their constitutions to include university mandated language regarding discrimination on the basis of religion or sexual orientation for the following reasons:

> 1. The affirmative right of religious student groups to determine the qualifications of the persons who plan and lead their meetings is a critical component of the equal access right because the leaders determine the content of those meetings and lead the group in worship, prayer and Bible study;
>
> 2. The active commitment of its leaders to its core values is essential to the implementation of those values through the group's meetings and other activities (Bainbridge, *supra,* at 384; Paulsen, *supra,* at 671);
>
> 3. In a very real sense, *leaders are the message,* the visible representatives of the group to the campus community, frequently addressing campus issues on behalf of the organization and serving as the liaison between university officials and the group;

4. Statements of faith in a group's constitution are important expressions of the group's collective identity to the greater campus community (Paulsen, *supra,* at 670-71);

5. Governmental coercion – or at best, governmental bribery – to recant commitment to particular religious convictions is wrong in and of itself (*id.*); and

6. A group may fear "hostile takeovers" or even "silencing" by persons who do not share the group's core values (*id.,* at 671 n.39).

Essentially, the current controversy at Ohio State University *may* be an attempt by a homosexual advocacy group to shutdown an evangelical Christian group because of its competing viewpoint regarding the morality of homosexual conduct. Fear of silencing or hostile takeovers is a realistic apprehension for small, unpopular groups whose election process might be easily hijacked by persons who oppose their message or whose viewpoints other groups might wish to censor.

Indeed, the potential for guerilla warfare among student organizations is enormous under the decision below. Persons who do not share an organization's core values may apply for leadership positions with nothing to lose. If they are accepted into leadership, they can use their positions to change the organization's ideology; if they are rejected, they can disqualify the organization from a significant source of funding.

The chilling effect on speech is substantial if religious student groups elect leaders under the threat that each election may result in a challenge to its recognition, access, and funding. Any disgruntled office seeker could trigger a university review of the internal elections of an

organization to ensure that the elections had been conducted in a "nondiscriminatory" manner. *Cf., Corporation of Presiding Bishop v. Amos,* 483 U.S. 327, 336 (1987) ("[f]ear of potential liability might affect the way an organization carried out what it understood to be its religious mission.").

C. Denial of Equal Access to Religious Groups Because They Require Their Officers Not to Engage in or Advocate Homosexual Conduct Violates This Court's Decisions in *Widmar v. Vincent,* 454 U.S. 263 (1981); *Rosenberger v. University of Virginia,* 515 U.S. 819 (1995); *Boy Scouts of America v. Dale,* 530 U.S. 640 (2000); and *Board of Regents v. Southworth,* 529 U.S. 217 (2000).

The right of religious student groups to meet on public university campuses is protected by this Court's decisions in *Widmar v. Vincent,* 454 U.S. 263 (1981), and *Rosenberger v. University of Virginia,* 515 U.S. 819 (1995). In *Widmar,* this Court prohibited public university officials from denying equal access to student groups engaging in religious speech. Notably, the *Widmar* university officials had not denied *all* access to religious groups but instead *conditioned* their access to campus facilities on their agreeing to abstain from religious worship or religious teaching at their meetings. 454 U.S. at 265, 266 n.3. This Court held that such a condition violated a religious student group's freedom of speech as well as its freedom of association. *Id.* at 269, 277.

In *Rosenberger,* this Court applied its *Widmar* analysis to reject university officials' denial of equal access to

student activity funds for a student publication simply because its viewpoint was religious. 515 U.S. at 834-837. Although the student funding program was a "forum more in a metaphysical than in a spatial or geographic sense . . . the same principles [prohibiting viewpoint discrimination] are applicable." *Id.* at 830.

The *Widmar/Rosenberger* equal access right is endangered, however, by university officials' attempts to obstruct access by religious student groups by conditioning their right of access on their agreeing not to discriminate on the basis of religion or sexual orientation in the selection of their officers. When a state university threatens to withdraw recognition of a religious student group because its leadership decisions are based on its religious convictions, the university "engage[s] in very nearly the precise conduct that *Widmar* forbids: discrimination on the basis of a group's religious nature and membership." Paulsen, *supra,* at 675. It makes little sense to recognize a constitutional right of equal access by a religious group, but simultaneously to deny a religious group the right *to be religious* in its message and its leadership.

Remarkably, by engaging in this viewpoint discrimination, university officials expose the entire student activity funding program to constitutional challenge. In *Board of Regents v. Southworth,* 529 U.S. 217, 221, 233-34 (2000), this Court upheld a public university's imposition of a mandatory student activity fee "if the program is viewpoint neutral." *Id.* at 221. The Court explained:

> The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views. Access to a public forum, for instance, does not depend upon majoritarian consent.

Id. at 235. *See also Gay Lesbian Bisexual Alliance v. Pryor,* 110 F.3d 1543 (11th Cir. 1997) (university officials committed viewpoint discrimination by denial of funding to student group in favor of homosexuality). By denying access to a student activity funding program to groups that disapprove of homosexual conduct while funding groups that favor homosexual conduct, university officials take the program out of the protection of *Southworth* and expose it to constitutional challenge from all students who object to their money being used to fund organizations with which they have political, ideological, or religious disagreements. As a matter of constitutional law and fairness, either the religious student organizations must have viewpoint neutral access to the funding program, or objecting students must be refunded their mandatory fee, or the program should be terminated. *See Southworth,* 529 U.S. at 229-30, 232-35.

Nor may university officials justify their viewpoint discrimination by claiming it is necessary to "forbid [] acts of discrimination toward certain classes" in order "to produce a society free of the corresponding biases." *Hurley,* 515 U.S. at 578. This Court has deemed "decidedly fatal" such governmental restructuring of an organization's purposes and values, rejecting the government's argument that:

> Requiring access to a speaker's message would thus be not an end in itself, but a means to produce speakers free of the biases, whose expressive conduct would be at least neutral toward the particular classes, obviating any future need for correction. But if this indeed is the point of

> applying the state law to expressive conduct, *it is a decidedly fatal objective.*

Id. at 578-79 (citations omitted) (emphasis added).

University officials' attempts to coerce orthodoxy on religious student groups are as constitutionally objectionable today as were the "loyalty oaths" in the 1950s or universities' denial of access to radical student groups in the 1970s. *See Healy v. James,* 408 U.S. 169 (1972) (public university officials conditioning recognition upon a student group's abandonment of its advocacy of violence and disruption violated both free speech and association). This Court long ago determined that "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia v. Barnette,* 319 U.S. 624, 642 (1943).

II. AS THE DECISION BELOW DEMONSTRATES, THE SECOND CIRCUIT CONTINUES TO RESIST THIS COURT'S REQUIREMENT THAT EQUAL ACCESS BE GRANTED WITHOUT VIEWPOINT DISCRIMINATION.

For a quarter century, the Second Circuit repeatedly has approved government officials' viewpoint discrimination against speakers expressing traditional religious viewpoints, frequently influencing other circuits to approve viewpoint discrimination. For example, the Second Circuit's decision in *Brandon v. Guilderland Board of Education,* 635 F.2d 971 (2d Cir. 1980), *cert. denied,* 454

U.S. 1123 (1981), triggered nationwide suppression of high school students' extracurricular religious speech when other circuits followed its lead.[3] The national damage inflicted by the Second Circuit's *Brandon* decision on high school students' religious speech necessitated an Act of Congress, the Equal Access Act, 20 U.S.C. §§ 4071-74 (2003), and a decision by this Court, *Board of Education v. Mergens,* 496 U.S. 226 (1990), to restore equal access for high school students. As this Court noted, the Equal Access Act was "enacted in part in response to" the Second Circuit's *Brandon* decision. 496 U.S. at 239, *citing* S. Rep. No. 98-357 at 6-9, 11-14 (1984) (describing *Brandon*'s negative effect).

Likewise, in *Good News Club v. Milford Central School,* 533 U.S. 98, 109 n.3 (2001), this Court took to task the Second Circuit for its "remarkable" and "incredible" failure to apply this Court's equal access precedent. Specifically, the Second Circuit ignored *Lamb's Chapel v. Center Moriches Union Free School District,* 508 U.S. 384 (1993), in which this Court unanimously reversed the Second Circuit's approval of school officials' viewpoint discriminatory denial of equal access to public school

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[3] *See Garnett v. Renton Sch. Dist.,* 865 F.2d 1121, 1124-27 (9th Cir. 1989) (relying on *Brandon* to hold Equal Access Act unconstitutional), *vacated,* 496 U.S. 914 (1990), *on remand,* 987 F.2d 641 (9th Cir.) (relying on *Mergens* to uphold Equal Access Act), *cert. denied,* 510 U.S. 819 (1993); *Bender v. Williamsport Area Sch. Dist.,* 741 F.2d 538, 551-57 (3d Cir. 1984) (citing *Brandon,* Establishment Clause trumps free speech right to meet of high school religious student group), *vacated on jurisdictional grounds,* 475 U.S. 534 (1986); *Lubbock Civil Liberties Union v. Lubbock Indep. Sch. Dist.,* 669 F.2d 1038, 1045-46 (5th Cir. 1982) (relying on *Brandon* to hold unconstitutional school district policy permitting equal access to religious student groups).

facilities for a religious community group. *Id., rev'g*, 959 F.2d 381 (2d Cir. 1992). Despite this Court's ruling in *Lamb's Chapel*, the Second Circuit subsequently upheld school officials' viewpoint discriminatory denial of equal access against a religious community group in *Good News Club v. Milford,* 202 F.3d 502 (2d Cir. 2000). Reversing the Second Circuit, this Court found "it remarkable that the Court of Appeals majority did not cite *Lamb's Chapel,* despite its obvious relevance to the case." *Good News Club,* 533 U.S. at 109 n.3.

Decisive action by this Court will prevent yet another round of litigation to protect the right of religious student groups to have equal access to university facilities, including student activity funding, without viewpoint discrimination by university officials. If the decision below is allowed to stand, the First Amendment right of religious student groups to require that their leaders affirm their core religious values, without forfeiting their First Amendment right of equal access to university facilities and student activity funding, will come under intensified attack.

CONCLUSION

For the reasons above, *amici* respectfully suggest that this case is one of the exceptional cases in which it would be appropriate for the Court to grant the petition for a writ of certiorari and summarily reverse the ruling of the court below. In the alternative, *amici* respectfully request that the petition for a writ of certiorari be granted and the case set for argument before this Court.

Respectfully submitted,

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APPENDIX

Statements of Interest of the *Amici Curiae*

The **Christian Legal Society**, founded in 1961, is a nonprofit interdenominational association of Christian attorneys, law students, judges, and law professors with chapters in nearly every state and at over 165 law schools. Numerous CLS student chapters have been threatened with denial of equal access to meeting space and student activity funding, because university officials deem that the student groups discriminate on the basis of religion and sexual orientation.

Since 1975, the Society's legal advocacy and information division, the Center for Law and Religious Freedom, has worked for the protection of religious belief and practice, as well as for the autonomy from the government of religion and religious organizations, in the Supreme Court of the United States and in state and federal courts throughout this nation.

Members of Christian Legal Society must sign the following Statement of Faith:

Trusting in Jesus Christ as my Savior, I believe in:

- One God, eternally existent in three persons, Father, Son and Holy Spirit.
- God the Father Almighty, Maker of heaven and earth.
- The Deity of our Lord, Jesus Christ, God's only Son, conceived of the Holy Spirit, born of the Virgin Mary; His vicarious death for our sins through which we receive eternal life; His bodily resurrection and personal return.

- The presence and power of the Holy Spirit in the work of regeneration.
- The Bible as the inspired Word of God.

The CLS student chapter constitution provides that "officers must exemplify the highest standards of morality as set forth in Scripture, abstaining from 'acts of the sinful nature' (Galatians 5:19-21), including fornication, adultery, and homosexual conduct (Exodus 20:14; Matthew 15:19; Romans 1:27; 1 Corinthians 6:9-10)."

The Center strives to preserve religious freedom in order that men and women might be free to do God's will. Using a network of volunteer attorneys and law professors, the Center provides information to the public and political branches of government concerning the interrelation of law and religion. Since 1980, the Center has filed briefs *amicus curiae,* in defense of individuals, Christian and non-Christian, and on behalf of religious organizations in virtually every case before the Supreme Court involving church/state relations.

The nation's Declaration of Independence "instituted a new government" by first announcing that it was "laying its foundations on [immutable] principles." One of these "self-evident truths" was that all persons are divinely endowed with rights that no citizen may divert nor government abridge. Among such inalienable rights are those enumerated in – but not conferred by – the First Amendment, the foremost of which is religious freedom. Because the source of religious freedom as acknowledged in the Declaration of Independence, is the Creator, not a constitutional amendment, statute, or executive order, it is not merely one of many policy interests to be weighed against others by any of the several branches of federal, state, or

local government. This nation has no higher duty than to protect inviolate its full and unimpaired enjoyment. Hence, the unequivocal and non-negotiable prohibition attached to this our First Freedom is "Congress shall make no law. . . ."

The Christian Legal Society's national membership, years of experience, and available professional resources enable it to speak with authority upon religious freedom matters before this Court.

Amicus Curiae **Campus Crusade for Christ International** ("CCC") has student chapters meeting at 731 universities and colleges across the country, including student chapters at 417 public universities and colleges. The purpose of CCC is to fulfill the Great Commission, Jesus' command to His disciples to "go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, and teaching them to obey everything I have commanded you." *Matthew* 28:19-20. Specifically, the goal of its student chapters is to reach every student at their campuses every year with the Gospel. Its leaders are to be effective witnesses of the Gospel to other students. At numerous public universities, CCC student groups have been threatened with denial of equal access to meeting space and funding because they set religious criteria for their leadership.

Campus Crusade for Christ International has the following Statement of Faith:

The sole basis of our beliefs is the Bible, God's infallible written Word, the 66 books of the Old and New Testaments. We believe that it was uniquely, verbally and fully inspired by the Holy Spirit, and that it was written without error (inerrant) in the original manuscripts. It is the

supreme and final authority in all matters on which it speaks.

We accept those areas of doctrinal teaching on which, historically, there has been general agreement among all true Christians. Because of the specialized calling of our movement, we desire to allow for freedom of conviction on other doctrinal matters, provided that any interpretation is based upon the Bible alone, and that no such interpretation shall become an issue which hinders the ministry to which God has called us.

We explicitly affirm our belief in basic Bible teachings, as follows:

1. There is one true God, eternally existing in three persons – Father, Son and Holy Spirit – each of whom possesses equally all the attributes of Deity and the characteristics of personality.

2. Jesus Christ is God the living Word, who became flesh through His miraculous conception by the Holy Spirit and His virgin birth. Hence, He is perfect Deity and true humanity united in one person forever.

3. He lived a sinless life and voluntarily atoned for the sins of men by dying on the cross as their substitute, thus satisfying divine justice and accomplishing salvation for all who trust in Him alone.

4. He rose from the dead in the same body, though glorified, in which He lived and died.

5. He ascended bodily into heaven and sat down at the right hand of God the Father, where

He, the only mediator between God and Man, continually makes intercession for His own.

6. Man was originally created in the image of God. He sinned by disobeying God; thus, he was alienated from his Creator. That historic fall brought all mankind under divine condemnation.

7. Man's nature is corrupted, and he is thus totally unable to please God. Every man is in need of regeneration and renewal by the Holy Spirit.

8. The salvation of man is wholly a work of God's free grace and is not the work, in whole or in part, of human works or goodness or religious ceremony. God imputes His righteousness to those who put their faith in Christ alone for their salvation, and thereby justifies them in His sight.

9. It is the privilege of all who are born again of the Spirit to be assured of their salvation from the very moment in which they trust Christ as their Savior. This assurance is not based upon any kind of human merit, but is produced by the witness of the Holy Spirit, who confirms in the believer the testimony of God in His written Word.

10. The Holy Spirit has come into the world to reveal and glorify Christ and to apply the saving work of Christ to men. He convicts and draws sinners to Christ, imparts new life to them, continually indwells them from the moment of spiritual birth and seals them until the day of redemption. His fulness, power and control are appropriated in the believer's life by faith.

11. Every believer is called to live so in the power of the indwelling Spirit that he will not fulfill the lust of the flesh but will bear fruit to the glory of God.

12. Jesus Christ is the Head of the Church, His Body, which is composed of all men, living and dead, who have been joined to Him through saving faith.

13. God admonishes His people to assemble together regularly for worship, for participation in ordinances, for edification through the Scriptures and for mutual encouragement.

14. At physical death the believer enters immediately into eternal, conscious fellowship with the Lord and awaits the resurrection of his body to everlasting glory and blessing.

15. At physical death the unbeliever enters immediately into eternal, conscious separation from the Lord and awaits the resurrection of his body to everlasting judgment and condemnation.

16. Jesus Christ will come again to the earth – personally, visibly and bodily – to consummate history and the eternal plan of God.

17. The Lord Jesus Christ commanded all believers to proclaim the gospel throughout the world and to disciple men of every nation. The fulfillment of that Great Commission requires that all worldly and personal ambitions be subordinated to a total commitment to "Him who loved us and gave Himself for us."

In response to God's love, grace and truth: The purpose of **InterVarsity Christian Fellowship/USA** is to establish and advance at colleges and universities witnessing communities of students and faculty who follow Jesus as Savior and Lord: growing in love for God, God's Word, God's people of every ethnicity and culture and God's purposes in the world.

Each member of the Board of Trustees, Staff and any Council of Reference, as a qualification of office, as the case may be, shall subscribe, at the time of election or before taking office and yearly thereafter, to her or his belief in the Doctrinal Basis of the fellowship, which shall be the basic biblical truths of Christianity, including:

(a) The unique Divine inspiration, entire trustworthiness and authority of the Bible.

(b) The Deity of our Lord Jesus Christ.

(c) The necessity and efficacy of the substitutionary death of Jesus Christ for the redemption of the world, and the historic fact of His bodily resurrection.

(d) The presence and power of the Holy Spirit in the work of regeneration.

(e) The expectation of the personal return of our Lord Jesus Christ.

InterVarsity carries out its ministry through student chapters. Officers of those chapters also are required to subscribe to the purpose and doctrinal basis. Currently, there are about 747 such chapters on 552 campuses in the United States. (Of these campuses, 250 are private institutions, 290 are public, and the status of 12 is unknown.) InterVarsity follows biblical procedure to deal with

suspected moral or doctrinal deviation. Many IVCF student chapters at public universities have been threatened with denial of equal access to meeting space and funding because they set religious criteria for their leadership.

This Doctrinal basis and procedure has resulted in conflict on at least 18 campuses, primarily on the campus institution's claim of violation of campus codes prohibiting discrimination on the basis of religion or sexual orientation.

Amicus Curiae **Christian Medical and Dental Association** ("CMDA") was founded in 1931 and today represents over 16,000 members – primarily practicing physicians representing the entire range of medical specialties. These members share a common commitment to the principles of biblical faith and the integration of those principles with professional practice. CMDA has approximately 160 student chapters at university and college campuses, public and private. Some CMDA student chapters have been threatened with denial of equal access to meeting space and funding because of their religious criteria for their leadership.

Amicus curiae **ReJOYce in Jesus Campus Fellowship** ("RJCF") has student chapters at 23 universities and colleges, including student chapters at 14 state universities and colleges. Its purpose is to promote the teachings of Jesus Christ according to the Holy Bible through Bible study, campus activities and service to the campus community. RJCF student chapters have been threatened with denial of equal access to meeting space and funding because of their religious criteria for their leadership.

While welcoming all students to attend its meetings, its voting members must subscribe to the group's Doctrinal Statement of Commitment to Historic Christianity, as well as agree to live by the group's written standards of personal conduct.

The Bylaws of ReJOYce in Jesus Campus Fellowship at Georgia Institute of Technology, which is representative of the Bylaws of other RJCF student chapters, set forth its *Doctrinal Statement of Commitment to Historic Christianity by Voting Members,* as follows:

This organization affirms the Holy Bible as the authoritative revelation of God to man, inerrant in the original manuscripts. This organization seeks to maintain a climate of free inquiry, while also maintaining unity of its leadership within the broad context of Christian orthodoxy. To do so, this organization requires that any attending member who wishes to become a voting member of this organization shall also affirm this fact and shall subscribe to the following confession of Christian faith:

> "I confess and believe:
>
> "The Bible, Old and New Testaments, is God's divinely inspired Word;
>
> "The triune God – God, the Father, the Son, Jesus Christ, who is true God and true man, and God, the Holy Spirit, who is a divine personage;
>
> "All have sinned and come short of the glory of God and therefore all are in need of salvation;
>
> "Salvation has been provided for all mankind through Jesus Christ, who is the only way to the Father and the only way anyone may obtain eternal life;

"The virgin birth of Jesus Christ, and that He who knew no sin was made sin for us that we might be made the righteousness of God in Him;

"That Jesus, having paid for our sins, was raised bodily from the dead, and having washed those who believe in His own blood, became the first begotten of many brethren where He now sits at the right hand of the Father in heaven;

"It is the will of God for every believer to be filled with the Holy Spirit, anointed with His power, and doing the works of Jesus, according to John 14:12;

"Those who have received Jesus Christ as their personal Lord and have been born again are the Church, which is His body;

"There will be a bodily resurrection of both the just and the unjust: the just unto eternal life with God and the unjust unto eternal damnation with Satan and his followers;

"In water baptism and in the observance of the Lord's Supper;

"In the catching up of the Church, and the very soon visible return of the Lord Jesus Christ."

Article V of the Bylaws presents *Standards of Personal Conduct for Voting Members,* which includes:

Any person who desires to be a voting member of this organization shall agree to conduct himself or herself in accordance with the following standards of personal conduct set forth herein.

A. A voting member of this organization shall not commit those acts which are expressly forbidden in Scripture, including idolatry, premarital or extramarital sex, homosexual behavior, drunkenness, coveting, theft, profanity, occult practices and dishonesty. (Exodus 20:1-17; Lev. 18:22; Deut. 18:10-11; Rom. 1:18-32; I Cor. 5:9-13, 6:18-19; Eph. 5:1:12).

Amicus curiae **National Association of Evangelicals** ("NAE") is a nonprofit association of evangelical Christian denominations, churches, organizations, institutions, and individuals that includes more than 50,000 local churches from 74 different denominations and serves a constituency of over 20 million people. The NAE is committed to defending religious freedom as a precious gift of God and a vital component of our American heritage.